

Application No. 09/822,693
Amendment dated April 25, 2003
Response to Office Action of Oct. 25, 2003

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Remarks

Claims 1 and 4-18 remain pending in this application, claims 2 and 3 having been cancelled in the present amendment.

Claims 2 and 3 have been cancelled without prejudice to pursuing those cancelled claims in further continuing application(s) filed during the pendency of the present application. As a result, the rejections of claims 2 and 3 have been rendered moot in the present application.

Claim 1 was said to be indefinite under 35 U.S.C. §112 based on the term "predetermined threshold value". The Office Action stated that the term "predetermined threshold value" was indefinite because the specification gives no guidance or suggestion as to how this value may be derived or ascertained.

Applicants submit that the specification does provide guidance and suggestion on how the "predetermined threshold value" for the temperature parameter would be selected. For example, the specification states that the method may be used "during operation of the fuel cell when the temperature is below the preferred operating temperature range." (page 2, lines 2-6). This suggests that the predetermined threshold value would

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typically be below this range. The specification also states "reactant starvation may be stopped before the normal operating temperature is reached once the fuel cell temperature has reached a predetermined threshold temperature". (page 8, lines 12-15). This indicates that the predetermined threshold value would typically be below the normal operating temperature range of the fuel cell. The specification also discloses a preferred operating temperature range for a solid polymer fuel cell to be "of the order of 60-120°C". (page 22, lines 11-13). In the examples, data are given which show the reactant starving being used until a certain temperature is reached. (See, for example page 25, lines 2-3 and the data in the Figures). Therefore, although the "predetermined threshold value" is a value that will be selected and may be different in different operating situation and for different fuel cells, the specification gives adequate guidance as to how the value can be determined.

Claim 1 was rejected for obviousness-type double patenting in view of claims 1-39 of Wilkinson et al. U.S. Patent No. 6,096,448 in view of Kawatsu et al. U.S. Patent No. 5,677,073. In order to expedite the allowance and issuance of the present application, Applicants are submitting a Terminal Disclaimer to overcome the obviousness-type double patenting rejection of claim

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1. Applicants' submission does not constitute an admission as to the accuracy or effect of the obviousness-type double patenting rejection.

* * * * *

In the October 25, 2003 Office Action, claim 1 was indicated as being allowable if rewritten to overcome the rejection under 35 U.S.C. §112 and if the obviousness-type double patenting rejection was overcome. In view of the foregoing amendments and remarks, applicants submit that claim 1 is allowable. Applicants also request consideration and allowance of new claims 4-18. The Examiner is invited to telephone the applicants' undersigned attorney at (312) 775-8202 if any unresolved matters remain.

A Petition for Three-Month Extension of Time accompanies this Amendment and Request for Reconsideration, along with the requisite fee for extension of time within the third month. Please charge any additional fees, and credit any overpayment, incurred in connection with this submission to Deposit Account No. 13-0017.

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Respectfully submitted,



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This Amendment is presented in the format suggested in the Official Gazette Notice dated January 31, 2003, entitled, "Amendments in a Revised Format Now Permitted." The listing of claims begins on page 3, and the remarks begin on page 7.

Please amend the application in this case as follows:

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